IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1373 OF 2007
[FOR LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2007

Mr.Iftekar Ahmed M.Maroof. ..Applicant.
(Orig.Complainant)
Versus
1. The State of Maharashtra, &
2. Mr.Chandrasekhar V. Chetty. ..Respondents.
(Respondent No.2-
Orig.Accused)

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Mr.A.M.Saraogi, Adv.i/b. Mr.N.B.Khan, Adv. for the Applicant.
Mr.Narayan Kumar, Adv. i/b. K.R. Shekhawat, Adv. for Respondent No.2.
Mr.A.R.Patil, APP, for Respondent No.1-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE OF RESERVING
THE ORDER : DECEMBER 04, 2007

DATE OF PRONOUNCING
THE ORDER : DECEMBER 07, 2007.

P.C.:

1. The applicant-orig.complainant has filed this application for leave to appeal against the judgment and order of acquittal dated 15.3.2007 passed by the learned M.M., 21st Court, Bandra, Mumbai in C.C. No.2569/SS/2005. By the said

judgment and order, the learned Magistrate acquitted respondent No.2-orig.accused of the offence punishable under Section 138 of N.I. Act.

2. Heard the learned Advocate for the applicant-orig.complainant, the learned Advocate for respondent No.2-orig.accused, and the learned APP for the State. Perused the impugned judgment and order as well as the record which has been annexed to the present application.

3. The two main grounds on which the learned Magistrate acquitted the respondent are (1) that the complaint under Section 138 N.I.Act was not filed within limitation, and (2) that there was no legal liability on the part of the respondent to pay the amount to the complainant.

4. As far as the point of limitation is concerned, it is seen that the notice is dated 22.8.2005. The complaint has been filed on 10.10.2005. It is the case of the complainant in his complaint that notice was received by the respondent on 30.8.2005, and hence the cause of

action arose and limitation would have to be counted from 14.9.2005 and if the period is counted from 14.9.2005, the complaint which was filed on 10.10.2005 was well within time.

5. Though the complainant has stated in his deposition that the notice was received by the respondent on 30.8.2005, however, immediately thereafter in his deposition the complainant has stated that he relies upon the copy of the consignment note/receipt dated 22.8.2005 of the Professional Courier and its acknowledgment in support of his contention that notice was served on 30.8.2005. However, on perusal of the consignment note/receipt dated 22.8.2005, nothing is found thereon to indicate that the notice was received by the respondent on 30.8.2005. Infact in his cross-examination, the complainant has stated thus : "I send demand notice to the accused through "Professional Courier Service" on 22.8.2005. I cannot state with certainty whether accused received the said notice on same day. The person from Courier can state the exact date when he gave notice to the accused". Thereafter the

complainant has examined PW-2 Dattaram Rane who is in service in the Courier company through whom the complainant had sent the notice to the respondent. However, this witness has also not stated that the notice was received by respondent on 30.8.2005. Infact he has stated that on both receipts the date is mentioned as 22.8.2005. In the present case it is pertinent to note that the notice was sent from Santacruz, Mumbai to Vasai which is on the outskirts of Mumbai. Moreover the witness Dattaram Rane who is working in the Courier company has stated that as per his experience if packet/parcel is received in Mumbai office, then after completion of all formalities it can be delivered at Vasai on the next day. He has also admitted that his Courier company has its branch at Vasai. The delivery boy who actually gave the notice to the respondent has not been examined. None of the receipts show that the respondent was served on 30.8.2005. There is no material to show that indeed the notice was served on the respondent on 30.8.2005. Infact from the depositions of the witnesses, it appears that the notice was served on the respondent either on

22.8.2005 itself or at the most on 23.8.205, in which case the complaint having been filed on 10.10.2005 would be beyond limitation.

6. The second aspect is that there was no legal liability on the part of the respondent-accused to pay the amount to the complainant. In the present case, the complainant has duly proved that there were two agreements between him and the respondent which were executed on one and same date. The first agreement is in respect of place which the accused has taken on leave and licence basis. The second agreement is in respect of sale of three machines owned by the complainant. The said agreement is at Exh.P-4. Para 2 Page 3 of the said agreement is most important and therefore the same is reproduced as under :-

> "2.The purchaser on or execution of these presents has paid to the vendor a sum of Rs.2,21,000/- (Rupees two lacs twenty one thousand only) being the part payment in respect of the said machineries and the

balance shall be paid by the purchaser to the Vendor within six months to eight months from the date hereof. Failing which the amount paid under these presents will be forfeited.".

. The above paragraph in the agreement clearly shows the right the complainant possesses if the accused failed to pay the balance amount of Rs.5 lacs (total amount of three dishonoured cheques) to the complainant. The complainant himself in his cross examination has admitted that the contents of Exh.P-4 (agreement for sale of machines) are true and correct. It is correctly mentioned in Para 2 of Exh.P-4 that respondent-accused gave Rs.2,21,000/- to him by cheque on the date of agreement and respondent-accused promised to pay Rs.5 lacs to him within a span of period of 6/8 months and if respondent-accused fails to pay Rs.5 lacs within the above stated stipulated time then the complainant shall have the right to forfeit the above stated amount of Rs.2,21,000/-. Thus, if the respondent-accused failed to pay Rs.5 lacs

within the stipulated period, the only course available to the complainant would be to forfeit the amount of Rs.2,21,000/-, and no legal liability would arise on the respondent-accused to pay the balance amount of Rs.5 lacs as provision in case of failure of payment of balance amount of Rs.5 lacs is made in the agreement itself. Thus, it is seen that there is no legal liability on the part of the respondent to pay the balance amount of Rs.5 lacs.

7. The learned Magistrate has taken both the above aspects into consideration and he has thereafter acquitted the respondent.

8. Looking to the evidence on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

9. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth

of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)